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Attorneys for Defendant ELIZABETH A. HOLMES

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,) Case No. CR-18-00258-EJD
Plaintiff,)
v.)
ELIZABETH HOLMES and)
RAMESH "SUNNY" BALWANI,)
Defendants.)

)

The parties in the above-captioned matter hereby file this joint status memorandum proposing a briefing schedule for Defendant Elizabeth Holmes' pending Motion To Compel Production of Rule 16 Discovery and Brady Materials, ECF No. 67 (the "Motion").

I. The Motion and the Status Hearing.

On February 5, 2019, Ms. Holmes requested from the government documents maintained by certain regulatory and law enforcement agencies that are the subject of the Motion. ECF No. 67 at 7-8.

1 The government declined to produce the documents, stating that it had already produced all documents it
 2 had obtained from these agencies and that any additional documents that might be held by those
 3 agencies were not in the government's possession, custody, or control. *Id.* The parties attempted to
 4 resolve the issue in the following weeks, including through correspondence and two telephonic
 5 conferences. *Id.* The government maintains its position that it does not have possession, custody, or
 6 control over the requested documents. *Id.* Ms. Holmes maintains that the government's position
 7 contravenes Ninth Circuit law regarding its discovery obligations.

8 Notwithstanding its position that Ms. Holmes is not entitled to the documents, the government
 9 offered to voluntarily request them from the relevant agencies, but at the same time relayed information
 10 from the agencies indicating that there was no guarantee all requested documents would be produced.
 11 *Id.* That information—conveyed during an April 5 conference—prompted Ms. Holmes to file the
 12 Motion seeking a court order compelling the government to obtain and produce the requested agency
 13 documents under Federal Rule of Criminal Procedure 16 and pursuant to the government's *Brady*
 14 obligations. *Id.*

15 The parties and the Court discussed the Motion at the April 22, 2019 status conference in this
 16 matter. The government there stated that it would seek to have “additional conversations with agency
 17 counsel to see whether there’s some middle ground, some ability to compromise.” 4/22/19 Hr’g Tr. at 7.
 18 The defense agreed that the government should pursue these conversations, with hope that the agencies
 19 (and the government) would reconsider their earlier positions now that there was a pending motion to
 20 compel. *See id.* The parties further agreed that they would file a joint status memorandum regarding the
 21 Motion to inform the Court about the status of the discussions with the agencies and among the parties,
 22 and, if no agreement had been reached by that time, to propose a briefing schedule for the Motion.

23 **II. The Status of the Government’s Discussions with the Relevant Agencies**

24 The government has engaged in several additional discussions with the relevant agencies since
 25 the April status conference, and believes that those discussions have been informative and productive.
 26 Specifically, the government has had further conversations with counsel at the Food and Drug
 27 Administration, the Center for Medicare and Medicaid Services, and the Securities and Exchange
 28 Commission. The government has not had similar conversations with California Department of Public

1 Health. Those discussions culminated in the government submitting formal document requests to the
2 FDA and CMS encompassing the categories of documents sought by the defense. The requests were
3 submitted to the agencies on May 9, 2019. The government is informed that the agencies have received
4 those requests and are preparing their responses. The agencies have not indicated when those responses
5 will be transmitted. The government has responded separately to the defense regarding the SEC's
6 position on the defense's request for attorney notes.

7 The defense believes that it is appropriate at this time to set a briefing schedule for the Motion,
8 and the government does not object.

9 **III. Proposed Briefing Schedule**

10 The parties agree that the Court should hear argument on the motion during the July 1, 2019
11 status conference scheduled in this matter. Accordingly, they propose the following briefing schedule:

12 Government's Opposition: June 12, 2019

13 Defendant's Reply: June 24, 2019

14 Argument: July 1, 2019

15 DATED: May 24, 2019

Respectfully submitted,

16 ADAM A. REEVES,
17 Attorney for the United States

18 /s/
19 JEFF SCHENK
20 JOHN C. BOSTIC
ROBERT S. LEACH
Assistant United States Attorneys

21 DATED: May 24, 2019

22 /s/
23 KEVIN DOWNEY
LANCE WADE
Attorneys for Elizabeth Holmes

24 DATED: May 24, 2019

25 /s/
26 JEFF COOPERSMITH
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